

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOEL F. HOLUBAR and
MARIANA H. HOLUBAR,

Plaintiffs,

v.

KENT KHOLBERGER,
CHASE-FREEDMAN FAMILY TRUST
and *M/Y CHEROSA, in rem*,

Defendants

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) Civil Action No. 03-CV-12404-NG
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DEFENDANTS' MOTION TO DISMISS FOR
DISOBEDIENCE OF COURT ORDER AND LACK OF PROSECUTION

Defendants'¹ move to dismiss this action for plaintiffs' unexcused failure to obey this Court's Scheduling Order and plaintiffs' ongoing failure to prosecute this action.

Plaintiffs' counsel's unexcused disobedience of this Court's August 12, 2005 Scheduling Order, by ignoring various discovery deadlines and two telephone Status Conferences with the Court (on December 19, 2005 and January 4, 2006), aggravated by his unexplained failure to communicate with the Court or defendants' counsel since August 2005, and plaintiffs' ongoing failure to prosecute this action, warrant dismissal of this action under Fed. R. Civ. P. 16(f), Fed. R. Civ. P. 41(b), and the First Circuit's decision in *Tower Ventures, Inc. v.*

¹ Kent Kohlberger (former captain of the motor yacht Cherosa), The Chase-Friedman Family Trust (owner of the Cherosa) and the Motor Yacht CHEROSA, *in rem*.

City of Westfield, 296 F.3d 43, 46 (1st Cir. 2002) (unexcused disobedience of court scheduling order constitutes “extreme misconduct” which supports dismissal).

In further support of this motion, defendants submit the accompanying memorandum of law.

Respectfully submitted,

/s/ Curtis C. Pfunder
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Date: February 13, 2006

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Attorneys for Defendants

Certificate Under Local Rule 7.1(2)

Counsel for the defendants, Edward C. Radzik, Esq. and I, Curtis C. Pfunder, have attempted to confer with plaintiffs’ counsel, Bjorn J. Holubar, Esq., to attempt in good faith to resolve or narrow the underlying issues that have precipitated the above motion to dismiss. As explained in more detail in defendants’ memorandum of law in support of this motion, however, plaintiffs’ counsel has been “unreachable,” even by the Court, for some time.

/s/ Curtis C. Pfunder
Curtis C. Pfunder
2/13/06